

1 UNITED STATES DISTRICT COURT
2 DISTRICT OF PUERTO RICO

3 ANTIA GARCÍA-OCASIO,

4 Claimant,

5 v.

6 COMMISSIONER OF SOCIAL SECURITY,

7 Respondent.

Civil No. 08-2311 (JAF)

8
9 **OPINION AND ORDER**

10 Claimant, Antia García-Ocasio, petitions this court under 42
11 U.S.C. § 405 (g) to review the decision of Respondent, Commissioner
12 of Social Security ("Commissioner"), denying the payment of
13 disability benefits to Claimant. (Docket No. 2.) Commissioner opposes
14 the petition. (Docket No. 9.)

15 **I.**

16 **Factual and Procedural Synopsis**

17 **A. Relevant Medical Record**

18 The following facts are derived from the parties' filings
19 (Docket Nos. 1; 2; 7; 9) and the record in this case ("R") (Docket
20 No. 2). Claimant, a high-school graduate, was born on April 18, 1953,
21 and worked as an office secretary. She left her job on December 29,
22 2000.

23 Claimant suffered from a combination of impairments, including
24 right-arm bursitis, tendinitis, osteoarthritis, disc bulge, a
25 herniated disk, lumbar muscle spasms, fibromyalgia, and a major
26 depressive disorder. Dr. Ana H. Martínez, a rheumatologist, evaluated

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1 Claimant on June 18, 2003, after complaints of multiple joint pain.
2 (R. at 56-59.) On February 6, 2004, Dr. William Matos examined
3 Claimant after she complained about morning stiffness, as well as
4 joint pain. (R. at 67-70.) Dr. Sánchez performed an assessment of
5 Claimant's physical residual functioning capacity ("RFC") in March
6 2004. (R. at 92-99.) Dr. Sánchez concluded that Claimant could lift
7 twenty-five pounds frequently and fifty pounds occasionally; stand
8 and walk for six hours in an eight-hour workday; and sit for about
9 six hours in an eight-hour workday. (R. at 93.) Furthermore,
10 Claimant could climb stairs and ramps, balance and kneel, and could
11 occasionally stoop, crouch, or crawl. (R. at 94.) Claimant continued
12 to see Dr. Martínez for the next several years. On August 17, 2007,
13 Claimant visited Dr. David A. Flores, a psychiatrist, for anxiety and
14 depression. (R. at 120.) Claimant continued to visit Dr. Flores for
15 a total of ten times, the last on March 8, 2006. Dr. Flores found
16 Claimant in a state of severe depression. (R. at 127.) Furthermore,
17 he stated that Claimant had a very poor prognosis and could not
18 return to work. (R. at 259-262.)

19 **B. Procedural Summary**

20 Claimant filed a Disability Insurance Benefits application on
21 August 13, 2003, alleging disability beginning December 29, 2002. It
22 was denied initially on March 16, 2004, and upon reconsideration on
23 July 22, 2004. Afterwards, on March 27, 2006, a hearing ("ALJ
24 hearing") was held before Administrative Law Judge ("ALJ") Gilbert
25 Rodríguez. Claimant, who was represented by counsel, testified at

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1 the hearing. (R. at 264-281.) On June 28, 2006, ALJ Rodríguez issued
2 a decision in which he concluded that Claimant did not engage in
3 substantial gainful activity during the period from her alleged onset
4 date of December 29, 2002, through her date last insured of
5 December 31, 2005. (R. at 36.) The ALJ concluded that Claimant was
6 not under a disability because she had the RFC to perform a range of
7 medium-level work that did not require dealing with the public and
8 avoided frequent stooping, crouching, and crawling and concentrated
9 exposure to vibration. (R. at 31-42.) Thus, the ALJ determined
10 Claimant could perform her past work as a secretary.

11 The Appeals Council reviewed the ALJ's decision and remanded on
12 the issue of the duration and severity of Claimant's depression. (R.
13 at 16.) The ALJ held a second hearing on January 22, 2008, in which
14 Claimant testified once again. (R. at 282-311.) In addition, Carmen
15 Margarita Valladares, a vocational expert, furnished testimony. In
16 his second decision of April 25, 2008, the ALJ concluded that
17 Claimant has not been disabled through December 31, 2005, the last
18 day she qualified for the disability insured status. (R. at 30.) The
19 ALJ opined that Claimant's RFC did not allow her to perform her past
20 relevant work, but she, nevertheless, had the RFC to perform jobs
21 that existed in significant numbers in the national economy. (R. at
22 30.)

23 On September 24, 2008, the Appeals Council denied Claimant's
24 request to review the ALJ's second decision. (R. at 4-8.) On
25 November 13, 2008, Claimant filed the present petition seeking review

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1 of the ALJ's second decision. (Docket No. 2.) Commissioner filed a
2 memorandum of law on May 14, 2009. (Docket No. 9.) Claimant has not
3 replied.

4 II.

5 Standard of Review

6 Under the Social Security Act ("the Act"), an individual is
7 disabled if she is unable to do her prior work or, "considering her
8 age, education, and work experience, engage in any other kind of
9 substantial gainful work which exists in the national economy." 42
10 U.S.C. 423 (d). The Act provides that "the findings of the
11 Commissioner . . . as to any fact, if supported by substantial
12 evidence, shall be conclusive." 42 U.S.C. § 405(g). Substantial
13 evidence exists "if a reasonable mind, reviewing the evidence in the
14 record as a whole, could accept it as adequate to support the
15 conclusion." Irlanda-Ortiz v. Sec'y of Health & Human Servs., 955
16 F.2d 765, 769 (1st Cir. 1991).

17 Commissioner's decision must be upheld if we determine that
18 substantial evidence supports the ALJ's findings, even if we would
19 have reached a different conclusion had we reviewed the evidence de
20 novo. Lizotte v. Sec'y of Health & Human Servs., 654 F.2d 127, 128
21 (1st Cir. 1981). When reviewing a denial of benefits, the ALJ must
22 consider all evidence contained in the record. 20 C.F.R.
23 § 404.1520(a)(3). Matters pertaining to credibility and "conflicts in
24 the evidence . . . are for the ALJ, rather than the courts to
25 resolve." Evangelista v. Sec'y of Health & Human Servs., 826 F.3d 31,

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1 35 (1st Cir. 1987). The ALJ may be reversed only if we find that he
2 arrived at the decision "by ignoring evidence, misapplying the law,
3 or judging matters entrusted to experts." Nguyen v. Chater, 72 F.3d
4 31, 35 (1st Cir. 1999). Review of denial of Social Security
5 disability benefits is limited to determining whether the ALJ
6 deployed the proper legal standards and found facts upon the proper
7 quantum of evidence.

8 **III.**

9 **Analysis**

10 **A. Physical Impairments**

11 The record reflects that the ALJ weighed the objective findings
12 from multiple physicians and several laboratory findings of
13 Claimant's physical condition against the severity requirements under
14 the Act. (R. at 23-26.) The ALJ concluded that Claimant's physical
15 problems did not satisfy the level of severity required under the
16 Act. As it appears that the ALJ's evaluation of Claimant's physical
17 RFC took into consideration all medical evidence, we find that the
18 ALJ's assessment of Claimant's physical impairments is supported by
19 substantial evidence.

20 **B. Mental Impairments**

21 We similarly analyze the ALJ's method in assessing Claimant's
22 alleged mental impairment. We consider whether the ALJ properly
23 concluded that Claimant was not mentally disabled based on the
24 evidence in the record. (R. at 24.) An ALJ is not qualified to assess
25 the claimant's RFC based on bare medical findings, as such are

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1 unintelligible to laypersons. Berrios López v. Sec'y of Health &
2 Human Servs., 951 F.2d 427, 430 (1st Cir. 1991).

3 The record reveals that Dr. Flores, a psychiatrist, examined
4 Claimant with regard to her alleged mental symptoms. (R. at 24.)
5 Claimant saw Dr. Flores a total of seven times between August 17,
6 2005, and the last date she was insured, December 31, 2005. In his
7 findings, Dr. Flores concluded that "due to her anhedonia, poor
8 modification and severe cognitive deterioration, [Claimant] would not
9 be able to perform a single hour of normal uninterrupted work. She
10 does not persist in her goals and continues to be totally disabled to
11 work in any type of remunerated task." (R. at 123.) Furthermore, the
12 vocational expert's testimony that a person under Claimant's mental
13 condition "could not do any work in our the national economy" (R. at
14 310) supports this conclusion.

15 Dr. Flores first examined Claimant on August 17, 2005, which was
16 within the relevant disability period from December 29, 2002, to
17 December 31, 2005. Upon examining the record, we find no evidence to
18 contradict Dr. Flores' psychiatric assessments. More importantly, we
19 fail to find any other mental or psychiatric evaluations at all. In
20 his second opinion, the ALJ even acknowledged that Claimant "has not
21 received any prior psychiatric treatment nor has she alleged any
22 psychiatric symptoms prior to this date." (R. at 24.) Because
23 Dr. Flores' medical evaluation constitutes Claimant's sole mental
24 evaluation in the record, this unique assessment must be taken into
25 consideration. Indeed, Dr. Martínez, a rheumatologist, referred

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1 Claimant to Dr. Flores precisely because she suspected depression in
2 Claimant. (R. at 277).

3 Turning to the merits, while ALJ Rodríguez asserted that this
4 particular psychiatric evaluation is "in conflict with and not
5 well-supported in severity to the preponderance of the medical or
6 other evidence record" (R. at 28), we believe that such judgment is
7 erroneous. The record contains only a single instance in which a
8 treating medical doctor, Dr. Flores, examined Claimant for the
9 exclusive purpose of assessing her psychiatric condition. (R. at 120-
10 23.) Without evidence to contradict Dr. Flores' findings, his
11 findings must not be brushed aside. The ALJ may not ignore or
12 fabricate evidence. Therefore, we do not find substantial evidence
13 in the record to support the ALJ's determination that Claimant lacks
14 a mental impairment which would severely limit her non-exertional
15 abilities to work.

16 The record does not reveal the exact date on which Dr. Martínez
17 referred Claimant to Dr. Flores. Meanwhile, the record does reflect
18 that Dr. Flores first examined Claimant on August 17, 2005. Since
19 Dr. Martínez examined Claimant for the first time on June 18, 2003
20 (R. at 56), the referral, and the onset of Claimant's alleged
21 depression, must have taken place at some point between June 18,
22 2003, and August 17, 2005.

23 For the aforementioned reasons, we find that the ALJ's mental
24 disability determination for the period from December 29, 2002,
25 ending December 31, 2005, lacks basis in substantial evidence. See 42

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1 U.S.C. § 405(g). When an ALJ's evaluation falls short of evidentiary
2 support, the standard remedy is to remand for further consideration
3 of relevant medical records. See Seavy v. Barnhart, 276 F.3d 1, 12-13
4 (1st Cir. 2001) (noting that two avenues for remand exist under the
5 fourth and sixth sentences of 42 U.S.C § 405(g)).

6 **IV.**

7 **Conclusion**

8 In view of the foregoing, we hereby **AFFIRM IN PART** the
9 Commissioner's determination with respect to Claimant's physical
10 impairments. We **GRANT** Claimant's petition (Docket No. 2) and **REMAND**
11 the case to Commissioner pursuant to sentence four of 42 U.S.C.
12 § 405(g), but only with respect to Claimant's mental condition
13 subsequent to June 17, 2003, and prior to the last insured date of
14 December 31, 2005.

15 **IT IS SO ORDERED.**

16 San Juan, Puerto Rico, this 12th day of November, 2009.

17 s/José Antonio Fusté
18 JOSE ANTONIO FUSTE
19 Chief U.S. District Judge